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UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

MYRNA I. JOHNSON,

Plaintiff,

v.

FRED MEYER STORES, INC., a  
Delaware corporation; and JAIME SAN  
MIGUEL,

Defendants.

Case No. 1J-04-008-CV (RRB)

**OPPOSITION TO FURTHER RESPONSE BY PLAINTIFF TO MOTION  
ON JURY INSTRUCTIONS**

After the telephone conference with the Court on March 6, 2008, defendant Fred Meyer Stores, Inc., prepared two motions. One motion was to dismiss defendant Jaime San Miguel as an individual defendant from the sole remaining contract claim. Plaintiff acquiesced in this dismissal.

The second motion was to have the Court confirm before trial that defendant Fred Meyer's previously submitted jury instructions Nos. 9, 10, 11 and 12 would be the law of the case for the limited remaining contract claim.

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The procedure and sequence for motions before this Court are set forth in Local Rule 7.1:

(a) Motion by moving party (defendant Fred Meyer)  
(3/12/08 – Docket No. 137)

(e) Opposition memo to motion by non-moving party (plaintiff Johnson) was due within 15 days (3/27/08) and any reply memo by the moving party (Fred Meyer) was due within 5 days of opposition. [Plaintiff requested extension to April 14, 2008, and defendant agreed if extension for reply to April 18, 2008. Docket No. 138. Order granted. Docket No. 139.]

(d) The failure by plaintiff Johnson to oppose Fred Meyer's motion may be deemed an admission that the motion is well taken and subject to summary ruling by the Court.

(i) The motion is deemed submitted after the opposition and reply pleadings are filed. [Plaintiff filed motion to strike on April 14, 2008, Docket No. 140, but no other opposition. Defendant filed reply on April 18, 2008. Docket No. 142.]

As Fred Meyer previously noted, plaintiff did not dispute nor take issue with defendant's proposed jury instructions. Plaintiff then filed a "reply to opposition to motion to strike" on April 23, 2008. Docket No. 144. This pleading is inappropriate because plaintiff's "motion to strike" on April 14 was her "opposition" to Fred Meyer's initial motion regarding its proposed jury instructions. The local rules do not provide for plaintiff's additional submission on April 23 and Fred Meyer's motion was deemed submitted on April 18 because the opposition and reply were filed by then. LR 7.1(i). But after receiving Fred Meyer's reply noting plaintiff's failure to oppose defendant's jury instructions, plaintiff now suggests that she is going to

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prepare *another* pleading regarding “special jury instructions” and file it by May 2, 2008. Fred Meyer’s motion has been submitted and there is no rule permitting another submission by plaintiff. Per LR 7.1(d), plaintiff’s failure to address the merits of defendant’s motion on the jury instructions in her April 14, 2008, opposition may be deemed an admission that Fred Meyer’s motion is well taken and this Court should so rule.

Defendant Fred Meyer asks the Court to not accept any further submissions by plaintiff regarding Fred Meyer’s motion on its proposed jury instructions Nos. 9, 10, 11 and 12. Plaintiff had her opportunity to oppose this motion and elected not to address the merits. There is no further procedural basis for her to now submit in opposition her “special jury instructions”. The Court should direct that no further pleadings will be accepted by plaintiff regarding the pending motion by defendant.

RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of April, 2008.

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s/ James R. Dickens

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Certificate of Service

I hereby certify that on April 25, 2008,  
a copy of the foregoing was served  
electronically on:

Mark Choate  
lawyers@choatelawfirm.com

s/ James R. Dickens